(2)

Supreme Court U.S.
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No. 01-1205

In The
Supreme Court of the United States

CAROLYN E. O'CONNOR,

Petitioner,

v.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC., *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION

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718P

RESPONDENT'S OBJECTIONS TO THE QUESTIONS PRESENTED FOR REVIEW

In the Section entitled REASONS FOR GRANTING THE WRIT, Petitioner has presented seven (7) issues for this Court to review. Respondent maintains that none of the questions presented merits this Court's review, since the Petitioner has presented no "compelling reasons" for this writ to be granted [see United States Supreme Court Rules, Rule 10].

Furthermore, Petitioner has altogether failed to argue that the United States Court of Appeals decision herein [at App. 45] is: " . . . in conflict with the decision of another United States court of appeals on the same important matter; [or the court of appeals] has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court as to call for this Court's supervisory power" [Rule 10(a)]. Indeed, the Petitioner makes only one case reference (and that is to an obscure state case as to the definition of "personal injury" – see Petition, p. 9).

Further, although she invokes 28 U.S.C. § 1654 in her section entitled STATUTES INVOLVED [Petition, p. 1], Petitioner provides no further indication in the body of her argument of how she perceives it has been (mis)applied.

Petitioner's arguments are, at best, rambling dissertations on various topics without any coherence or legal presentation whatsoever. From this standpoint, the Respondent invokes the provisions of United States

RESPONDENT'S OBJECTIONS TO THE QUESTIONS PRESENTED FOR REVIEW – Continued

Supreme Court Rule 14.4, noting that "[t]he failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition."

Because of the sometimes incomprehensible presentation of arguments in the Petition, Respondent's rebuttals herein (which, for the convenience of the court, are broken down in similar sections to those in the Petition) are based on what the Petitioner's point appears to be.

Lastly, it is noted that several of the arguments in the Petition were not raised or decided in the lower courts. This factor will be argued under each of the respective issue headings.

LIST OF PARTIES TO THE PROCEEDINGS

Carolyn O'Connor is the plaintiff in this matter. The only defendant is Northshore International Insurance Services, Inc. Although the Petitioner at times made references to other "John Does", she has never identified those other persons or pressed that point.

Pursuant to the provisions of Rule 29.6 of the United States Supreme Court Rules, the Respondent, Northshore International Insurance Services, Inc., states that it has no parent corporation and no publicly held company owns more than ten (10) percent of its stock. On February 8, 2000, Northshore International Insurance Services, Inc., consolidated with Apex Management Group, Inc., and became NIIS/Apex Group Holdings, Inc., a Massachusetts corporation.

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U.S. District Court Order of Dismissal in 00CV10677 GAO, entered June 22, 2000; see App. 19

U.S. District Court Memorandum and Order of dismissal of No. 00CV11427 RWZ, entered on August 7, 2000; see App. 31

U.S. District Court Order of Dismissal in 00-10677-GAO, entered on March 22, 2001; see App. 35

Judgment of the First Circuit Court of Appeals entered on October 22, 2001; see App. 44

Per Curiam decision of First Circuit Court of Appeals, entered on October 22, 2001; see App. 45

First Circuit Court of Appeals Order of December 5, 2001, denying Petitioner's "Request for Appeal of Decision", which was treated as a petition for panel rehearing; see App. 48[1]

CONCISE STATEMENT OF JURISDICTION

Petitioner has only made reference to the December 5, 2001 decision of the First Circuit Court of Appeals [see Petition, p. 1].

This does not comply with Rule 14.1(e) of the Rules of this Court.

[1] Respondent was never served with a copy of the "Request for Appeal of Decision", and does not have one to append to this Opposition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner makes reference to "First Amendment" and "Seventh Amendment" [see Petition, p. 1].

Respondent submits that the First Amendment to the Constitution of the United States is not involved at all in this matter since there is no allegation (nor could there be) that there was any "state action" taken against the Petitioner.

Petitioner states that the Seventh Amendment [to the United States Constitution] protects "Pro se rights" [see Petition, p. 5]. Respondent submits that Petitioner is wrong; and that the Seventh Amendment is not invoked at all by an issue involving the level of protection (or general latitude or liberal interpretation of pleadings) to be afforded to a pro se litigant in a civil matter.

Petitioner has also referred to 28 U.S.C. § 1654 under a heading of "STATUTES INVOLVED" [*id.*, p. 1]. Although that section does permit persons to proceed pro se, it is not true nor does the Petitioner even allege that anyone prohibited this Petitioner from proceeding in that manner.

CONCISE STATEMENT OF THE CASE

On or about September 3, 1999, the Petitioner filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), charging the Respondent with "discrimination based on my religious belief" [App. 6]. On January 26, 2000, the EEOC issued its decision dismissing the complaint [App. 8].

On April 17, 2000, Petitioner filed a complaint with the District Court of Massachusetts alleging (1) negligence, (2) fraud and intentional misrepresentation, and (3) intentional acts ("geared to inflict harm, discredit, humiliate or otherwise bring blame on the [Petitioner])" [App. 16]. On or about May 25, 2000, the Respondent filed a Motion to Dismiss that complaint. On June 22, 2000, the District Court dismissed the complaint but gave leave – expressly to accommodate her "pro se" status – for the Petitioner to amend her complaint within thirty-five (35) days [App. 19].

Rather than amend her complaint, the Petitioner filed a new complaint in the U.S. District Court (No. 00CV11427 RWZ), which additionally raised issues of sex and age discrimination [App. 21]. The clerk was ultimately ordered to file these papers (as an amended complaint) under the original case # 00CV10677 GAO; and to dismiss the new action [App. 31]. The matter then proceeded under the original case number.

The Respondent then moved to dismiss that amended complaint on the basis that: (1) it was time barred; (2) the claims are beyond the scope of the administrative charges; (3) the complaint failed to state a cause of action; (4) the alleged federal question is frivolous and unsubstantial; (5) the court lacks jurisdiction since the complaint states no cause of action under 42 U.S.C. § 2000e-2(a)(1); and (6) the action brought under 42 U.S.C. § 2000e-2(a)(1) is barred by the statute of limitations [App. 33].

On March 22, 2001, the District Court dismissed the complaint, holding that: (a) the claims of age and sex discrimination had not been raised at the EEOC and could

not be presented for the first time to the U.S. District Court; and (b) the complaint falls short of stating any claim for religious discrimination under Title VII [App. 36-39].

This matter was briefed before the First Circuit Court of Appeals. Petitioner's four (4) page "Brief in Support of Plaintiff's Position", dated May 30, 2001, is appended here in its entirety [App. 40].

On December 12, 2001, the First Circuit Court of Appeals entered its *Per Curiam* decision, affirming the District Court's Order in all respects, pursuant to 1st Cir. Local Rule 27(c) [App. 44].

It is from this decision that the Petitioner seeks the instant writ of certiorari.

SUMMARY OF THE ARGUMENT

Only Issues 1 and 2, as defined by Petitioner, were preserved for review because they were the only issues argued to the Court of Appeals.

Petitioner was not entitled to have no procedural standards applied to her because she is proceeding pro se. In any event, Petitioner was given the benefit of her pro se status. Petitioner did not raise any constitutional issue as to her pro se status before the courts below; and there are no constitutional parameters to a right to proceed pro se in a civil matter.

The District Court applied the correct test for presenting a prima facie case of religious discrimination; and the Court of Appeals affirmed on the correct basis. Petitioner

is not entitled to have no standard for a prima facie case apply to her.

There is no merit to Petitioner's claim of a persecution of religious beliefs and/or First Amendment rights.

Petitioner's claims regarding continuous injury are without merit. She only raises them in order to circumvent the statute of limitations; and the statute of limitations is not an issue in this matter. Petitioner has not presented any facts upon which to base a claim of continuous injury.

The statute of limitations is not an issue in this case. Petitioner has failed to preserve (by arguing below) either that the Massachusetts 3-year statute of limitations should apply here; or that the 180 day limitations period in 42 U.S.C. § 2000e-5 is too short as a constitutional principle. Petitioner has presented no authority in support of either of these arguments.

ARGUMENT FOR DENIAL OF PETITION

Initially, it is to be noted that Petitioner's Brief to the First Circuit Court of Appeals dealt with two issues: (1) the standard to be applied in determining if the plaintiff has presented a prima facie case of religious discrimination in a Title VII case [App. 40-42]; and (2) should a pro se litigant be held to the "legal form/pleadings equal to that of legal professional" [App. 42-43].

Respondent contends, therefore, that only Issues 1 and 2, as identified by Petitioner at pp. 4-7 of the instant Petition, are even available for further review.

This Court does "not normally decide issues not presented below". *Carlson v. Green*, 446 U.S. 14, 17 n.2 (1980); *Heath v. Alabama*, 474 U.S. 82, 87 (1985). Importantly, none of the factors generally considered by this Court when it does consider such issues are present here – i.e., the issues were not fairly presented and fully briefed, they are not important, recurring issues, and the interests of judicial administration will not be served by addressing the issues. *Carlson v. Green, supra* at 17 n.2. Clearly, none of those factors apply to any of Petitioner's issues, and particularly not to issues 4-7.

ISSUE 1

Petitioner's Rights As A Pro Se Litigant Were Not Violated

Reduced to its essentials, Petitioner contends here that she was entitled to additional or extra latitude in application of the rules of procedure (and regarding limitations periods) because she is proceeding pro se.

Although, in some circumstances, "[t]he First Circuit holds a pro se litigant to a standard of pleading less stringent than that for lawyers, . . . this cannot be taken to mean that pro se complaints are held to no standard at all." *Green v. Commonwealth of Massachusetts*, 108 F.R.D. 217, 218 (D.Mass. 1985).

In employment discrimination cases, "pro se status does not relieve an employee of the obligation to meet procedural requirements established by law." *Lattimore v. Polaroid Corp.*, 99 F.3d 456, 464 (1st Cir. 1996).

More importantly, however, Petitioner did benefit from all of the accommodations that the law makes for pro se litigants.

On June 22, 2000, Judge O'Toole expressly took note of Petitioner's pro se status and gave her more time to set forth "in necessary detail" all federal claims she meant to assert [App. 19]. Instead, as noted, she filed a new complaint which, although ultimately treated as an amendment to her original complaint, still failed woefully to sufficiently state a claim for religious discrimination under Title VII.

While dismissing Petitioner's "amended" complaint, the trial court expressly noted that it had liberally construed the language of her complaint in her favor [App. 37, n.1]; and had "extend[ed] plaintiff every reasonable inference" in considering the facts alleged in her amended complaint [*id.*].

It is clear from the rulings of the District Court and the Court of Appeals that both Courts extended very liberal accommodations to the reading and the application of the Petitioner's papers, expressly and/or implicitly because she was appearing pro se. Rather than to be harmed in these proceedings because she was pro se, she was in fact allowed substantial latitude in her pleadings because of that fact. Notwithstanding this latitude, however, she still failed to make any allegation of sex or age discrimination at the EEOC level, and her allegations fell woefully short of presenting any prima facie case of religious discrimination.

In this regard, her complaint was very properly dismissed.

Insofar as she raises a constitutional issue as to her rights as a pro se litigant [see Petition, pp. 10-11], this argument was not raised at either the District Court or the Court of Appeals. As noted above, issues not presented and/or passed on below are generally not considered by this Court unless they are important, recurrent issues and the interests of administrative justice will be served by addressing them. *Carlson v. Green*, *supra*; *Heath v. Alabama*, *supra*. Neither of these qualifications applies here.

As a matter of substance, there is no question that there is a statutory right for a litigant to proceed in federal court without counsel. *See* 28 U.S.C. § 1654. And although there is certainly a constitutionally protected right to counsel in criminal cases – Amendment VI – there are just as certainly no constitutional parameters to one's right to proceed pro se. That right is entirely statutory.

Nor has Petitioner provided any authority for her position on this issue as a basis for appropriate appellate argument.

ISSUES 2 and 3

The Standard For Advancing A Claim Of Religious Discrimination Is Correct And Was Appropriately Applied In This Case

There is no question that the District Court applied the appropriate test for presenting a prima facie case of religious discrimination in employment when it relied upon the case of *EEOC v. Union Independente de la Autoridad de Acueductos de Puerto Rico*, 30 F.Supp.2d 217, 22021 (D.P.R. 1998) [App. 33].

Further, the Court of Appeals was equally correct in affirming the District Court because the Petitioner had failed to plead sufficient facts to present a case of religious discrimination based either on improper motivation or on hostile work environment [App. 46-47]. The cases relied upon by the Court of Appeals are sound and are applicable here. Petitioner has not pointed to any alternative legal theory.

Quite simply, Petitioner proposes no alternative standard for presenting a prima facie case, and certainly no authority for such an alternative standard exists.

Reducing her Petition to its essentials on this point, she is merely arguing that, because she is pro se, no requirement of a prima facie showing should be applied at all to her. All legal authority is to the contrary.

ISSUE 4

The Petitioner's Claim Of An Abuse Of First Amendment Rights Is Without Merit

No matter how phrased by the Petitioner, her claims for alleged religious discrimination in the workplace are governed by the provisions of 42 U.S.C. § 2000e and by the interpretive case law decided thereunder.

Of course, there is no state action alleged in this matter so as to invoke the principles of the First Amendment to the Constitution of the United States.

Thus, what Petitioner now labels as "persecution of (alleged) religious beliefs" and "First Amendment rights"

[see Petition, p. 8] has been adequately addressed by the District Court and the Court of Appeals in their decisions herein.

ISSUE 5

Petitioner's Claims Regarding Continuing Injury Are Without Merit

Petitioner's Issue 5 is apparently a part of her argument – also contained in her issues 6 and 7 – that the statute of limitations for bringing EEOC claims has been wrongly applied to her. It appears she argues here that the actions of the Respondent against her still continue. Therefore (it appears she is arguing), the statute of limitations has not commenced to run against her, never mind to have run out.

It is to be noted in this regard (as well as in regard to Issues 6 and 7) that the statute of limitations is in fact not even a part of this case. Although it had been raised as an issue by the Respondent in its Motion to Dismiss the Amended Complaint, neither the District Court nor the Court of Appeals found it necessary to even deal with that issue. This case was therefore not decided at all on the basis of a limitations issue.

The District Court merely found that: (1) Petitioner's claims of sex and age discrimination were not properly before the court since they had not been alleged at the administrative level [App. 37-38]; and (2) as to the claim of religious persecution, Petitioner had not presented a prima facie case [App. 38].

The Court of Appeals affirmed on the basis that: (1) the allegations of Petitioner's complaint regarding

religious discrimination are insufficient to support a claim either of improper motivation or hostile work environment; and (2) as was found in the District Court, her claims of sex and age discrimination were not properly before the court since they had not been alleged at the administrative level.

For the principle that Petitioner's claims of age and sex discrimination cannot be presented for the first time in federal court, both the District Court and the Court of Appeals correctly relied upon *Lattimore v. Polaroid Corp.*, *supra* at 99 F.3d 464.

Thus, Petitioner's arguments that the statute of limitations has somehow been tolled has no relevance in this matter.

Insofar as she may be arguing that her injury continued long after her termination ("continuous injury" and "ongoing economic impact") and that therefore the statute of limitations should not have begun to run; Petitioner has presented no authority to support such a position. Indeed, it does not comport with common sense, since that alone would toll the running of virtually every statute of limitations, thereby defeating their very purpose.

Insofar as she may be arguing that the employer has continued to somehow act against her and that those actions are still alive, Petitioner has not said what those actions have been. Her failure to present even basically sufficient allegations of religious discrimination still form the (proper) basis for dismissal of her actions. A plaintiff cannot rest on conclusory allegations alone. *Kun v. Finnegan, Henderson, Farabow, Garret & Dunner*, 949 F.Supp. 13 (D.D.C. 1996).

ISSUES 6 and 7

Petitioner's Claims Regarding The Statute Of Limitations Are Without Merit

Petitioner appears to be arguing that: (1) the Massachusetts statute of limitations for tort actions should apply here; and (2) the 180 day statute of limitations in 42 U.S.C. § 2000e-5 is so short as to somehow be "a Constitutional wrong" [Petitioner's Brief, p. 9].

First, as noted above, neither the existence nor the length of any limitations period is an actual factor in this matter. Petitioner's amended complaint did not, and she still has not, made any allegation of sex or age discrimination at the EEOC. This was therefore an issue of exhaustion of administrative remedies in the District Court and Appeals Court decisions; not the application of a statute of limitations to bar her claim. In this proceeding, she has not been denied any rights based on a statute of limitations.[2]

Second, as with several of the other issues in the Petition, neither the suggestion that the proper limitations period is the one contained in Massachusetts tort law, nor the suggestion that the limitations period in 42 U.S.C. § 2000e-5 is unconstitutionally too short was ever raised in the Court of Appeals. They have therefore not been preserved for further review by this Court.

As a matter of substance, it is patently ludicrous to suggest that the (3-year) Massachusetts statute of

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[2] This would also mean that Petitioner has no standing to raise a constitutional issue regarding any statute of limitations since, to date, no statute of limitations has been applied so as to bar any of her claims.

limitations for generic tort actions should be applied in these matters. There is a clear and unambiguous limitations period contained in the governing statute [at 42 U.S.C. § 2000e-5].

Petitioner presents no authority (as, indeed, there is none) to support either her proposition that statutes of limitations rise to constitutional dimensions, or that an individual state statute of limitations should prevail over the one contained in the governing statute.

SANCTIONS

Recognizing that this Court has established a practice of admonishing petitioners in appropriate circumstances – *Whitaker v. Superior Court of California*, 514 U.S. 208 (1995) – it is respectfully requested that this Court enter an order prohibiting this Petitioner from bringing any further actions or petitions in the federal courts which name Northshore International Insurance Services, Inc., as a defendant and which spring from the same series of events which underlie this matter.

CONCLUSION

For all of the foregoing reasons, the Petition for Writ of Certiorari should be denied in its totality.

Respectfully submitted,

Respondent, Northshore International Insurance Services, Inc.,
By its attorneys,

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EXHIBIT A

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form.

ENTER CHARGE NUMBER

[ ] FEPA
[ ] EEOC 161 99 0396

_____ and EEOC
(State or local Agency, if any)

NAME *(Indicate Mr., Ms., or Mrs.)*

Carolyn E. O'Connor

HOME TELEPHONE *(Include Area Code)*

(978) 745-1237

STREET ADDRESS

24 Norman Street, Unit 210

CITY, STATE AND ZIP CODE

Salem, MA 01970

COUNTY

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (*If more than one list below.*)

NAME

Northshore International Insurance

NO. OF EMPLOYEES/MEMBERS

100+

TELEPHONE NUMBER (*Include Area Code*)

978 745-6655

STREET ADDRESS

76 Lafayette Street

CITY, STATE AND ZIP CODE

Salem, MA 01970

NAME

TELEPHONE NUMBER (*Include Area Code*)

STREET ADDRESS

CITY, STATE AND ZIP CODE

CAUSE OF DISCRIMINATION BASED ON
(*Check appropriate box(es)*)

[ ] RACE [ ] COLOR [ ] SEX [X] RELIGION
[ ] NATIONAL ORIGIN [ ] AGE
[ ] RETALIATION [ ] OTHER (*Specify*)

DATE MOST RECENT OR CONTINUING
DISCRIMINATION TOOK PLACE (*Month, day, year*)

4/99

THE PARTICULARS ARE
(*If additional space is needed, attached extra sheet(s)*):

See attached charge

[ ] I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – (When necessary to meet State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Date 9/3/99

/s/ Carolyn E. O'Connor
Charging Party (Signature)

SIGNATURE OF COMPLAINANT
/s/ Carolyn E. O'Connor

My Commission Expires 10/01/04

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

/s/ [Illegible] 09/03/99

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

[ ] FEPA
[X] EEOC 161990396

Mass Comm Against Discrimination and EEOC

NAME *(Indicate Mr., Ms., or Mrs.)*

Ms. Carolyn E. O'Connor

HOME TELEPHONE *(Include Area Code)*

(978) 745-1237

STREET ADDRESS

24 Norman Street, Unit 210

CITY, STATE AND ZIP CODE

Salem, MA 01970

DATE OF BIRTH

10/14/1953

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME *(If more than one list below.)*

NAME

Northshore International Insurance

NUMBER OF EMPLOYEES, MEMBERS

Cat B (101-200)

TELEPHONE (*Include Area Code*)

(978) 745-6655

STREET ADDRESS

76 Lafayette Street

CITY, STATE AND ZIP CODE

Salem, MA 01970

COUNTY

009

NAME

TELEPHONE NUMBER (*Include Area Code*)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON
(*Check appropriate box(es)*)

[ ] RACE [ ] COLOR [ ] SEX [X] RELIGION
[ ] NATIONAL ORIGIN [ ] RETALIATION
[ ] AGE [ ] DISABILITY [ ] OTHER (*Specify*)

DATE DISCRIMINATION TOOK PLACE

EARLIEST	*LATEST*
08/01/1998	04/01/1999

[ ] CONTINUING ACTION

THE PARTICULARS ARE
(If additional space is needed, attached extra sheet(s)):

I. On or about April 1999, I was terminated from my position as a Claims Director. I had received no prior notice of any work related performance problems. My work was approved by my superiors.

II. It was represented that the reason for my termination was complaints. When I asked for specifics as to the nature of the complaints, I was advised that they had no specifics. Any complaints concerning my work would have been in the care, custody, and control of my superiors.

III. I believe that the real reason for my termination is discrimination based on my religious belief, in violation of Title VII of the Civil Rights Act of 1964, as amended.

[ ] I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – (When necessary to for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Date Charging Party (*Signature*)

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year)

_____

EEOC Form 161 (10/96)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Carolyn E. O'Connor
24 Norman St.
Unit 210
Salem, MA 01970

From: Equal Employment Opportunity Commission
Boston Area Office
John F. Kennedy Federal Bldg.,
Room 475
Boston, MA 02203

[ ] *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

Charge No.	EEOC Representative	Telephone No.
161990396	Rance A. O.Quinn, Supervisor	617-565-3192

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

[ ] The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

[ ] Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.

[ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statues.

[ ] We cannot investigate your charge because it was not filed within the time limit required by law.

[ ] Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherise failed to cooperate to the extent that it was not possible to resolve your charge.

[ ] While reasonable efforts were made to locate you, we were not able to do so.

[ ] You had 30 days to accept a reasonable settlement offer that afford full relief for the harm you alleged.

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

[ ] Other (*briefly state*) _____

– NOTICE OF SUIT RIGHTS –

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** from your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

/s/ Robert L. Sanders — JAN 26 2000

Robert L. Sanders, (*Date Mailed*)
Area Director

Enclosure(s)

cc: Northshore International Insurance Services, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUFFOLK, SS.

CAROLYN E. O'CONNOR.
Plaintiff, Pro Se

v.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC. and JOHN DOES (No.'s One Through Ten).
Defendant

CIVIL ACTION NO.: 00CV106777 GAO

VERIFIED COMPLAINT

Parties

1. The Plaintiff, Carolyn E. O'Connor, is an individual residing at 24 Norman Street, Salem, Massachusetts, County of Essex,

2. The Defendant Northshore International Insurance Services, Inc., at all times relevant, a Massachusetts Corporation. It's principal place of business is 76 Lafayette Street, Salem, Massachusetts, County of Essex.

3. The Defendants John Does (no.'s one through ten) are any such defendants found, through discovery in this litigation, to be liable to the plaintiff for damages.

Jurisdiction

4. That this action encompasses, if not also stems from, violation of statute 42 U.S.C.A. 2000e-2(a)(1). That all administrative remedies have been exhausted with regard to this matter. A copy of the finding by the EEOC is enclosed as Exhibit A.

Facts Common to All Counts

5. The prior to April 19th, 1998, the plaintiff underwent a series of interviews with management personnel at Northshore International Insurance Services, Inc. (hereinafter called "NIIS"). The plaintiff specifically interviewed with David Ives, President, Richard Ives, Vice President, Joseph Yablonski, Vice President and Norman Tardiff, Vice President. The plaintiff originally solicited NIIS for part time employment as an insurance/reinsurance auditor and spoke with Joseph Yablonski in this regard. Joseph Yablonski advised that NIIS had "more business that it could handle" in this area and indicated that a full time employee was desired by NIIS to help them in their work. Then did the plaintiff submit a resume for employment consideration. Having a background as a reinsurance auditor, the plaintiff qualified as an auditor for this business NIIS engaged in. At no given time, during the course of said interviews was any other work, other than auditing discussed. In all interviews, the plaintiff advised of her background in insurance/reinsurance auditing and this was discussed. Specifically, in said interviews with Joseph Yablonski and Norman Tardiff did these company officers remark that the person the plaintiff also should be interviewing with is Darrell Gwinn, Vice President. It was intended that the plaintiff would be working with Darrell

Gwinn. However, because Darrell Gwinn was away on business, plaintiff was interviewed by other personnel on his behalf. Because these officers were anxious to fill a personnel slot within NIIS, plaintiff was hired without regard to the hiring criteria for personnel by Darrell Gwinn and, indeed, was never interviewed by Darrell Quinn.

6. At her own expense, the plaintiff incurred moving expenses and housing expenses, that would not otherwise be considered, in relocating from New Jersey to Massachusetts. The plaintiff accepted a job opportunity with NIIS on the belief that she was accepting a position as an insurance/reinsurance auditor. Such a position was clearly, by industry standards, better than the position the plaintiff was then currently engaged in, which was that of an insurance claims examiner/adjuster in property/casualty claims.

7. On the plaintiff's first day of work at NIIS, she was advised by Darrell Gwinn that her job duties "for now" consisted of being an insurance claims examiner/adjuster in property/casualty claims, specifically, handling claims involving professional liability. The plaintiffs title was *Claim Director.* It was indicated to the plaintiff that her job duties would be changed at a later date. The plaintiff had had prior experience in handling and overseeing professional liability claims and, considering the circumstances, could do little else but take this disappointment in stride and make the best of it. (Management intent to shift plaintiffs duties in enclosed in Exhibit B. The plaintiff learned of this specific intent in December 1998.)

8. That the plaintiff, being unmarried with no children, did relocate from New Jersey to Massachusetts and

incurred moving expenses and housing expenses. The plaintiff moved solely to assume a position with NIIS on the belief that said position was that of an auditor. The plaintiff had no known friends or relatives living in Massachusetts when this relocation was initiated.

9. That Darrell Gwinn and the plaintiff did not, so to speak, have the same personalities. From about the first day of the plaintiff's employment with NIIS, did Darrell Gwinn direct and oversee the plaintiffs work in such a way so as to heap blame and inconvenience on the plaintiff in the manner with which she proceeded with the work. That the plaintiff could only work in such a manner that we like, to use a colloquialism, swimming in mud.

10. That the plaintiff did everything to cooperate with Darrel Gwinn in his work as the plaintiff initiated a relocation, as her own expense, to work at NISS and that it was represented to the plaintiff that her work duties would eventually be changed.

11. That Darrell Gwinn, throughout the plaintiff's employment with NISS, took such intentional actions to discredit, humiliate and heap blame the plaintiff, personally and professionally, so as to oust, the plaintiff from her employment. Use of discrimination being among Darrell Gwinn's campaign efforts against the plaintiff.

12. That Darrell Gwinn's efforts against the plaintiff were initiated with the approval of other NIIS management and/or other personnel.

13. That Darrell Gwinn's campaign against the plaintiff resulted in termination of her employment with NIIS on or about April 9th, 1999.

14. That the defendants proceeded to discredit the plaintiff after her termination with NIIS so as to blackball her from the profession she had previously worked.

COUNT I
(NEGLIGENCE).

15. Plaintiff repeats and incorporated the allegations contained in the preceding paragraphs as if fully set forth herein.

16. That the hiring parties were anxious to fill an employment slot in NIIS.

17. The hiring parties did not obtain full agreement from all parties in the hire of the plaintiff, nor did their hiring practice include all personnel appropriately involved in the hire of the plaintiff and therefore negligent in their activities with this regard.

18. That the hiring parties knew that Darrell Gwinn would reject the plaintiff as his "assistant" and still insisted that the plaintiff work with Darrell Gwinn throughout her employ with NIIS.

19. As a result of the defendants negligence, plaintiff has suffered substantial monetary damages.

COUNT II
(FRAUD AND INTENTIONAL
MISREPRESENTATION)

20. Plaintiff repeats and incorporated the allegations contained in the preceding paragraphs as if fully set forth herein.

21. The representations by NIIS, either expressed or implied, let the plaintiff to believe that she was relocating to another State in order to take a position in insurance/reinsurance auditing.

22. That auditing duties were not assigned to the plaintiff as her regular ongoing work nor assigned individual business accounts for auditing purposes only.

23. Plaintiff, a seasoned professional in the insurance/reinsurance field, would not have incurred great expense to move to a lateral job position, for a mere monetary increase in salary.

24. Defendants concentrated on their own business plans and their own convenience at the expense of the plaintiff without, intentionally, revealing actual job description or career path.

25. As a direct result of Defendants conduct, plaintiff was damaged and continues to suffer damages.

COUNT III
(INTENTIONAL ACTS)

26. Plaintiff repeats and incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

27. Defendants actions were geared to inflict harm, discredit, humiliate or otherwise bring blame on the plaintiff, to place the plaintiff in a no-win situation.

28. The distress sustained by the plaintiff were severe and of nature that no reasonable person could be expected to endure.

REQUEST FOR RELIEF

WHEREFORE, plaintiff respectfully requests that the Court:

1. Award plaintiff actual, statutory, punitive or other damages on all counts in amounts to be determined at trial.
2. Award plaintiff attorneys fees incurred for consultation and guidance in this litigation.
3. Enter Judgment for plaintiff and against all Defendants on all applicable counts.
4. Grant to plaintiff such other relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

/s/ Carolyn E. O'Connor
Carolyn E. O'Connor

VERIFICATION

I, Carolyn E. O'Connor certify that to the best of my knowledge and belief, the information contained in the above complaint are true and accurate. Sworn and subscribed to this 5 day of April 2000, under the pains and penalties of perjury.

/s/ Carolyn E. O'Connor
Carolyn E. O'Connor,
Plaintiff

The Commonwealth of
Massachusetts Essex, S.S.
(county)

Date 4/5/00

Then personally appeared
the above named

/s/ Carolyn E. O'Connor
and acknowledged the
foregoing instrument to be
his/her free act and deed,
before me Sarojini Rajani

SAROJINI RAJANI
Notary Public
My Commission Expires Dec. 3, 2004

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-10677-GAO

CAROLYN E. O'CONNOR
Plaintiff,

v.

NORTH SHORE INTERNATIONAL INSURANCE SERVICES, INC., et al.,

Defendants.

ORDER

June 22, 2000

O'TOOLE, D.J.

The defendant, North Shore International Insurance Services, Inc. (North Shore), moves to dismiss the plaintiff's *pro se* complaint. As grounds for this motion, North Shore argues the complaint fails to state any federal claim that provides this Court with subject matter jurisdiction. After reviewing the complaint, the Court agrees the complaint fails to state a federal claim and that diversity jurisdiction is unavailable. Thus, the complaint must be dismissed for want of jurisdiction under Fed. R. Civ. P. 12(b)(1).

North Shore's motion to dismiss is therefore GRANTED. Recognizing that *pro se* litigants may sometimes express their claims inartfully, *see Haines v. Kerner*, 404 U.S. 519 (1972), the plaintiff is given leave to file, within 35 days of the date of this Order, an amended complaint setting forth in necessary detail any claims

arising under federal law that she means to assert, showing that this Court has jurisdiction of her claims. If no amended pleading is filed within the time permitted, the action will be dismissed.

June 22, 2000
DATE

/s/ George A. O'Toole, Jr.
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUFFOLK, SS.

CAROLYN E. O'CONNOR.
Plaintiff, Pro Se

CIVIL ACTION NO.: 00CV11427 RWZ

v.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC. and JOHN DOES (No.'s One Through Ten).
Defendant

COMPLAINT

Parties

1. The Plaintiff, Carolyn E. O'Connor, is an individual residing at 24 Norman Street, Salem, Massachusetts, County of Essex,.

2. The Defendant Northshore International Insurance Services, Inc., at all times relevant, a Massachusetts Corporation. It's principal place of business is 76 Lafayette Street, Salem, Massachusetts, County of Essex.

3. The Defendants John Does (no.'s one through ten) are any such defendants found, through discovery in this litigation, to be liable to the plaintiff for damages.

Jurisdiction

4. That this action stems from violation of statute 42 U.S.C.A. 2000e Administrative remedies on the Federal level have been exhausted with regard to this matter.

Facts Common to All Counts

5. The prior to April 19th, 1998, the plaintiff underwent a series of interviews with management personnel at Northshore International Insurance Services, Inc. (hereinafter called "NIIS").

6. The plaintiff originally solicited NIIS for part time employment as an insurance/reinsurance auditor and spoke with Joseph Yablonski in this regard. Joseph Yablonski advised that NIIS had "more business that it could handle" in this area and indicated that a full time employee was desired by NIIS to help them in their work.

7. Then did the plaintiff submit a resume for employment consideration. Having a background as a reinsurance auditor, the plaintiff qualified as an auditor for this business NIIS engaged in.

8. At no given time, during the course of said interviews was any other work, other than auditing discussed. In all interviews, the plaintiff advised of her background in insurance/reinsurance auditing.

9. Plaintiff was never advised that the position in question was actually that of an insurance claims adjuster/examiner.

10. At her own expense, the plaintiff incurred moving expenses and housing expenses, that would not otherwise

be considered, in relocating from New Jersey to Massachusetts. The plaintiff accepted a job opportunity with NIIS on the belief that she was accepting a position as an insurance/reinsurance auditor.

11. On the plaintiff's first day of work at NIIS, plaintiff was advised by Darrell Gwinn that plaintiff's job duties "for now" consisted of being an insurance claims examiner/adjuster in casualty claims, specifically, handling claims involving professional liability.

12. The representation "for now" led the plaintiff to believe that the "terms, conditions and privileges" of an auditing position were merely being postponed. However, upon eventually reading the company business plan, it was determined that this was not so.

12. From about the first day of the plaintiff's employment with NIIS, did Darrell Gwinn direct and oversee the plaintiffs work in such a way so as to heap blame and inconvenience on the plaintiff in the manner with which she proceeded with the work. That the plaintiff could only work in such a manner that was like, to use a colloquialism, swimming in mud.

13. This behavior was designed to discriminate and/or initiate disparate treatment against the plaintiff based on sex and age (note Exhibit Y).

14. The work to which the plaintiff was assigned was eventually transferred to a white male with only seven (7) years experience as a casualty claims adjuster/examiner. This person was not subject to the adverse working conditions suffered by the plaintiff.

15. During the course of employment in NIIS, the plaintiff, in a casual conversation with Darrell Gwinn

advised that plaintiff was a Fundamentalist Christian and did not agree with the concept of homosexuality.

16. Darrell Gwinn stirred up a hate and discrimination campaign against the plaintiff by alleging that plaintiff hated homosexuals. Darrell Gwinn delibertly misrepresented the plaintiffs religious beliefs to support and design said campaign against the plaintiff.

17. Indeed, plaintiff never said that plaintiff hated homosexuals.

18. However, plaintiff subsequently overheard a conversation led by Roger Dougherty advising other people in this group that plaintiffs beliefs were against the company's policy on tolerance.

19. Throughout the plaintiff's employment with NIIS, Darrell Gwinn took such intentional actions to discredit, humiliate and heap blame the plaintiff, personally and professionally, so as to oust the plaintiff from her employment. Use of discrimination being among Darrell Gwinn's campaign efforts against the plaintiff.

20. The plaintiff suffered social ostracism within the workplace and the hate stirred against the plaintiff led to acts of hostility and unreasonableness against the plaintiff.

21. Darrell Gwinn's efforts against the plaintiff were initiated with the approval of NIIS management.

22. Darrell Gwinn's campaign against the plaintiff resulted in the termination of her employment with NIIS on or about April 9th, 1999.

23. The plaintiff was dealt with unreasonably throughout plaintiff's employ with NIIS – unreasonably within the scope and practice of the industry. This unreasonable

treatment was initiated and agreed to by NIIS management in the course of their discrimination against the plaintiff.

24. The defendants proceeded to discredit the plaintiff after her termination with NIIS so as to blackball her from the profession she had previously worked. Indeed, plaintiff has not been able to obtain a position within the insurance field, even being turned away by temporary placement agencies catering to the insurance industry. Therefore, plaintiff has been supporting herself by working jobs outside the insurance field. Because plaintiff has not worked in this profession for over a year. That the plaintiff was slandered so as to prevent plaintiffs employ within this field.

COUNT I
(NEGLIGENCE)

25. Plaintiff repeats and incorporated the allegations contained in the preceding paragraphs as if fully set forth herein.

26. NIIS discriminated against plaintiff based on sex by not assigning auditing work as assigned to men with a reinsurance background.

27. Additionally, NIIS knew that Darrell Gwinn would reject and discriminate against the plaintiff, based on age and sex, as his "assistant" and still insisted that the plaintiff work with Darrell Gwinn throughout her employ with NIIS (see Exhibit Y) without seeing that the plaintiffs work assignment was changed.

28. That the officers at NIIS knew that the plaintiff was being dealt with unreasonably and that the aggression

against the plaintiff was a symptom of discrimination against the plaintiff based on sex and age and eventually on religious discrimination and neglected any anti-discrimination procedure to be initiated.

29. As a result of the defendants negligence, plaintiff has suffered substantial monetary damages and seeks relief totaling twenty-three million ($23,000,000.) dollars.

COUNT II
(FRAUD AND INTENTIONAL MISREPRESENTATION)

30. Plaintiff repeats and incorporated the allegations contained in the preceding paragraphs as if fully set forth herein.

31. Auditing duties were never assigned to the plaintiff as her regular ongoing work nor assigned individual business accounts for auditing purposes only. That the plaintiff was not assigned said accounts as the men employed in NIIS with a reinsurance background were, thus, the plaintiff was discriminated on basis of sex.

32. Defendants concentrated on their own business plans and their own convenience at the expense of the plaintiff without, intentionally, revealing actual job description or career path. Defendants purposely withheld said auditing accounts from plaintiff, discriminating on the basis of sex.

33. As a direct result of Defendants conduct, both jointly and severally, plaintiff was damaged and continues to suffer damages. Plaintiff seeks relief in the amount of twenty-three million ($23,000,000.) dollars.

COUNT III
(INTENTIONAL ACTS)

34. Plaintiff repeats and incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

35. Defendant's actions, jointly and severally, were geared to inflict harm, discredit, humiliate or otherwise bring blame on the plaintiff, to place the plaintiff in a no-win situation (see Exhibit Y). That these actions were symptoms of discrimination, not only based on age and sex, but also, eventually, on religious discrimination.

36. Defendants were aware of the hostility and discriminatory treatment against the plaintiff and permitted any anti-discriminatory action to be ignored.

37. As a result of defendants discriminatory behavior, the plaintiff seeks relief in the amount of twenty-three million ($23,000,000.) dollars.

COUNT IV
(SLANDER)

38. The plaintiff repeats and incorporates the allegations contained in the preceding paragraphs as if fully set forth herein.

39. The plaintiff was slandered during the course of the plaintiff's employ with NIIS, and the purpose of this slander, saying that the plaintiff hated homosexuals, was grounded in religious discrimination. This slander was

designed to stir up unreasonable hate against the plaintiff to as to oust the plaintiff from her employ with NIIS.

40. The hatred stirred against the plaintiff, caused plaintiffs employers to mask the purpose of their termination against the plaintiff. The termination of the plaintiff was based, not on "complaints", as defendants claimed, but on religious discrimination.

41. The plaintiff's exemplary work, which was also subject to independent outside reviews, proved that the plaintiff completed a proper, in order, work product. In fact, plaintiff has a background in handling professional liability claims that Darrell Gwinn lacked.

42. Said "complaints" alleged against plaintiff were prompted by Darrell Gwinn's intentionally poor managerial procedure (as noted in Exhibit Y).

43. Said "complaints", if any, would only be, within the trade, of a nature that no employer would hold against an employee.

44. In fact, NIIS made a business decision to keep the handling of professional liability claims as the plaintiff's regular duties without advising the client (see attached Exhibit Z), long after said "complaints" were alleged. Therefore proving that "complaints" were really not an issue with plaintiff's termination.

45. In fact, NIIS made the business decision to keep the handling of professional liability claims as the plaintiff's regular duties despite any client objections.

46. Background circumstances support the plaintiff's lawsuit in this matter.

46. As a result of defendants discriminatory behavior, plaintiff seeks relief in the amount of twenty-three million ($23,000,000) dollars.

REQUEST FOR RELIEF

WHEREFORE, plaintiff respectfully requests that the Court:

1. Award plaintiff actual, statutory, punitive or other damages on all counts in amounts stated or to be determined at trial.

2. Award plaintiff attorneys fees incurred for consultation and guidance in this litigation.

3. Enter judgment for plaintiff and against all Defendants on all applicable counts.

4. Grant to plaintiff such other relief as the Court may deem just and proper under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

/s/ Carolyn E. O'Connor
Carolyn E. O'Connor

VERIFICATION

I, Carolyn E. O'Connor certify that to the best of my knowledge and belief, the information contained in the above complaint is true and accurate. Sworn and subscribed to this 20 day of July 2000, under the pains and penalties of perjury.

/s/ Carolyn E. O'Connor
Carolyn E. O'Connor,
Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CAROLYN E. O"CONNOR Plaintiff, v. NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC Defendant.	)	Civil Action No. 00-11427-RWZ

MEMORANDUM AND ORDER

On April 6, 2000, plaintiff Carolyn O'Connor filed a pro se employment discrimination complaint against the defendant. The action was assigned Civil Action Number 00-10677-GAO (receipt number 21532). In an Order dated June 22, 2000, plaintiff was granted leave to file, within 35 days of the date of the Order, an amended complaint.

On July 20, 2000, plaintiff filed a new complaint and the clerk assigned the new action Civil Action Number 00-11427-RWZ (receipt number 23955). Plaintiff's new complaint should not have been filed as a new action, but should have been filed in the earlier action. The second payment of the $150.00 is not required and plaintiff should be refunded the $150.00 overpayment.

Based upon the foregoing, it is hereby

ORDERED, the Clerk is directed to return $150.00 to plaintiff Carolyn O'Connor; and it is further

ORDERED, the Clerk is directed to file plaintiff's new complaint in Civil Action Number 00-10677-GAO; and it is further

ORDERED, the Clerk is directed to CLOSE this case.

SO ORDERED.

Dated at Boston, Massachusetts, this 7th day of August, 2000.

/s/ Rya W. Zobel
RYA W. ZOBEL
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL ACTION
NO. 00CV10677 GAO

CAROLYN E. O'CONNOR
Plaintiff,

V.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC., and JOHN DOES (No's One Through Ten
Defendant.

MOTION TO DISMISS

Now comes the defendant, North Shore International Insurance Services, Inc., ("NIIS"), and moves this Honorable Court to dismiss the plaintiff's complaint which was transfer back to this court on August 7, 2000, based on the following grounds:

1. that the instant action is time barred;

2. that the plaintiff's claims are beyond the scope of the administrative charges;

3. that the plaintiff fails to state a claim upon which relief can be granted;

4. that the alleged federal question is frivolous and unsubstantial;

5. that this court lacks jurisdiction over the subject matter of the claims set forth in the complaint in that the plaintiff merely recites

in her complaint that jurisdiction stems from 42 U.S.C.A. 2000e-2(a)(1), however she sets forth no cause of action under said statute and that accordingly, there is no proper case or controversy arising under federal law;

6. that the action brought by the plaintiff under 42 U.S.C.A. 2000e-2(a)(1) is barred by the statute of limitations.

In support of this Motion, defendant submits the attached Memorandum of Law.

Respectfully Submitted,
NorthShore International
Services, Inc.
By its attorney,

Dated: Sept. 5, 2000 /s/ Mary P. Harrington
Mary P. Harrington
BBO#222840
Ronan, Segal & Harrington
59 Federal Street
Salem, MA 01970
(978) 744-0350

CERTIFICATE OF SERVICE

I, Mary P. Harrington, hereby certify that a copy of the within Motion to Dismiss and Memorandum in support thereof were served by mailing the same, pre-postage paid to: Carolyn E. O'Connor, 24 Norman Street, Unite 210, Salem, MA 01970.

Dated: Sept. 5, 2000 /s/ Mary P. Harrington
Mary P. Harrington

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Carolyn E. O'Connor
Plaintiff

V.

CIVIL ACTION NO.
00CV10677-GA0___

Northshore International Ins.
Et al
Defendant

ORDER OF DISMISSAL

O'Toole D.J.

In accordance with the Court's allowance of the defendant's motion to dismiss on 3/22/01, it is hereby ORDERED that the above-entitled action be and hereby is dismissed.

By the Court,

3/22/01
Date

Matthew Hogan
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 00-10677-GAO

CAROLYN E. O'CONNOR
Plaintiff

v.

NORTHSHORE INTERNATIONAL
INSURANCE SERVICES, INC. and JOHN DOES
(Numbers One through Ten),
Defendants

ORDER

March 22, 2001

O'TOOLE, D.J.

The defendant, Northshore International Insurance Services, Inc. (Northshore), has moved to dismiss the plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, as well as pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. For the reasons below, the motion is GRANTED and the plaintiff's case is DISMISSED.

According to the amended complaint, the plaintiff, Carolyn E. O'Connor, accepted employment with Northshore in the Spring of 1998. Approximately one year later, her employment was terminated. O'Connor contends that the termination was the result of unlawful employment discrimination by Northshore.

This is the second time this Court has addressed a motion to dismiss the complaint in this action. On June 22, 2000, the Court granted Northshore's motion to dismiss for want of subject matter jurisdiction, but because O'Connor is proceeding *pro se*, the Court allowed her an opportunity to restate her claims in sufficient detail to demonstrate that they fell within the subject matter jurisdiction of the federal courts. Her amended complaint met this burden in part. By alleging violations of federal law under 42 U.S.C. § 2000e-2(a)(1) and by pleading adequate compliance with the administrative procedures proscribed by Title VII of the Civil Rights Act of 1964, she has sufficiently shown that her claim of religious discrimination is properly before the Court.[1]

However, her claims of age and sex discrimination, appearing for the first time in the amended complaint, must be dismissed for failure to satisfy the necessary prerequisite of first filing an administrative charge. *See* 29 U.S.C. §§ 623(a)(1), 626(d); 42 U.S.C. § 2000e-5(f)(1); *Lattimore v. Polaroid Corp.*, 99 F.3d 456, 464 (1st Cir. 1996). The bounds of this civil action are set by the violations alleged in the prior administrative action. *Lattimore*, 99 F.3d at 464. O'Connor failed to raise her claims of age and sex discrimination in her claim filed with the Equal Employment Opportunities Commission

[1] The claims are all presented in terms generally used to plead state law causes of action, i.e., "negligence' (Count I), "slander" (Count IV), etc. However, the substance of at least part of her claims appears to be employment discrimination on the basis of her religion. The language is liberally construed in the plaintiff's favor.

("EEOC"), and therefore, these claims cannot be presented for the first time here.[2] *See id.*

To say that the Court has subject matter jurisdiction for O'Connor's claim of employment discrimination is not to say that the amended complaint adequately states a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Under Rule 12(b)(6), a motion to dismiss is properly granted if "it appears to a certainty that the plaintiff would be unable to recover under any set of facts." *See Roma Constr. Co. v. aRusso*, 96 F.3d 566, 569 (1st Cir. 1996). The facts alleged in the amended complaint in support of any federal claim are notably few, but the Court considers the well-pleaded facts and "extend[s] plaintiff every reasonable inference." *Pihl v. Massachusetts Dep't of Educ.*, 9 F.3d 184, 187 (1st Cir. 1993). Even under this standard, O'Connor falls short of stating a claim for religious discrimination under Title VII. A prima facie case of religious discrimination consists of three components: "(1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief; (3) he or she was disciplined for failure to comply with the conflicting employment requirement." *EEOC v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico*, 30 F. Supp.2d 217, 220-

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[2] The claim of age discrimination falls outside of the scope of Title VII's protection, but the Age Discrimination in Employment Act ("ADEA") similarly requires that certain administrative procedures be timely followed as a condition precedent to the filing of a civil action under the act. The filing of a charge with the EEOC within the statutory period is among the required conditions. *See* 29 U.S.C. § 626(d).

21 (D.P.R. 1998) (quoting *Turpen v. Missouri-Kansas-Texas R.R. Co.*, 736 F.2d 1022, 1026 (5th Cir. 1984)). If shown to be true, the facts alleged in the complaint are nonetheless insufficient to establish the necessary elements of religious discrimination. As a result, the claim of employment discrimination under Title VII is DISMISSED with prejudice. The state law claims are DISMISSED without prejudice.

The parties shall bear their own costs with respect to this action.

It is SO ORDERED.

March 22, 2001
DATE

/s/ George A. O'Toole, Jr.
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Suffolk, ss

CAROLYN E. O'CONNOR
Pro Se Plaintiff-Appellant

DOCKET NO.: 01-1547

v.

NORTH SHORE INT'L. INSURANCE SERVICES, INC. et al
Defendants-Appellees

BRIEF IN SUPPORT OF PLAINTIFF'S POSITION

This brief is presented to the Honorable Court and sets out various matters pertaining to the captioned matter, on which a ruling is requested, as follows:

Plaintiff brings to the honorable Court's attention that the Fair Employment Law, Executive Order 11246, Equal Employment Opportunity Act of 1972 and Title VII of the Civil Rights Act of 1964 (herein referred to as "anti-discrimination laws") guarantee to all workers the right to be free from discrimination because of race, color, religious creed, national origin, sex, sexual orientation, age, ancestry or disability. Nor shall any worker be subject to discharge, denied promotional opportunity, intolorable working conditions or harassment because of said discrimination. The intent of these laws and order, as reasonably expected, is grounded in the standard that no one, however disabled, impoverished or powerless, is to be oppressed or exploited.

In this case, the aforementioned laws and order were breached by defendant (herein after referred to as "NIIS")

and as a result of this breach, plaintiff sustained injury and incurred damages.

The plaintiff declares that the criteria for a prima facie case for religious discrimination is met in this matter.

The plaintiff also points out to the Honorable Court that the Court uses the concept of a "prima facie" case in two senses: (1) in the sense of plaintiff producing evidence sufficient to render reasonable a conclusion in favor of the allegation(s) plaintiff asserts; this means plaintiff's evidence is sufficient to allow her case to go to jury, and (2) courts use "prima facie" to mean not only that plaintiff's evidence would reasonably allow the conclusion the plaintiff seeks, but also that plaintiff's evidence compels such a conclusion if defendant produces no evidence to rebut it. It is reasonable to expect that the Court use of "prima facie" takes prevalence in all cases presented to the Court as it does not create an exception to any law that would prejudice any plaintiff's claim under common law.

While the Fair Employment Law, Executive Order 11246, Equal Employment Opportunity Act of 1972, and title VII of the Civil Rights Act of 1964 all prohibit discrimination, the Court allows private clubs, supported by its own members and not engaged in interstate commerce, to set its own membership criteria. The Court also takes into consideration when a job policy sets the criteria for a bona fide job requirement: for example, a woman cannot sue for discrimination if she is turned down for the job of men's locker room attendant, since being male would be a legitimate qualification for the job. It is understood and agreed that qualification(s) must be reasonably related to the job itself.

In this case, plaintiff points out that during her employment with NIIS, defendant/Appellee was engaged in the business of insurance and held themselves out to the public as insurance experts engaged in insurance/reinsurance auditing and claim handling. Plaintiff is full qualified as an insurance/reinsurance professional. Therefore, the criteria defendant alleges as the standard for religious discrimination in this case, appears erroneous.

Plaintiff also points out that the criteria defendant alleges as the standard for religious discrimination designs and makes hollow the guarantee set by the aforementioned "anti-discrimination" laws. Anti-discrimination laws exist and if plaintiff is denied protection under said laws, plaintiff's rights pursuant to the 14th Amendment are violated.

In this case, plaintiff is discriminated against by NIIS on the basis of religion, sex and age.

Everyone is to have free access to the Courts and is to be afforded a fair trial. This is the intent of the 7th Amendment. Regardless of economic status, everyone must be enabled to have access to the court system and a fair trial. The current legal system is stylized to respond only to legal professionals. Therefore, plaintiff seeks not to be prejudiced in this case as a pro se plaintiff.

To demand as a condition for access to justice that plaintiff effect legal form/pleadings equal to that of legal professional, when plaintiff has no such training, is unreasonable, arbitrary and capricious.

That said condition of legal form equal to that of a legal professional when plaintiff has no such training, bars the

plaintiff from due process of law and violates the plaintiff's right of equal protection under the law pursuant to the 7th Amendment and 14th Amendment.

Plaintiff demands reasonable opportunity to be heard and present any claim as befits this action.

Respectfully submitted,

/s/ Carolyn E. O'Connor
Carolyn E. O'Connor

Date: 5/30/01

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 01-1547

CAROLYN E. O'CONNOR

Plaintiff, Appellant,

v.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC., ET AL.,
Defendants, Appellees.

JUDGMENT

Entered: October 22, 2001

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Massachusetts.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: Judgment is Affirmed.

Certified and Issued
as mandate under
Fed R. App. P.
DEC 12 2001
RICHARD CUSHING
DONOVAN
Clerk
/s/ Betty McQueen
Deputy Clerk

By The Court:

Janice O'Neil,
Acting Clerk

By: JULIE GREGG
Appeals Attorney

[cc: Carolyn E. O'Connor and Mary P. Harrington]

[NOT FOR PUBLICATION - NOT TO BE CITED AS PRECEDENT]

United States Court of Appeals

For the First Circuit

No. 01-1547

CAROLYN E. O'CONNOR

Plaintiff, Appellant,

v.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC., ET AL.,

Defendants, Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. George A. O'Toole, Jr., U.S. District Judge]

Before

Boudin, Chief Judge,
Torruella and Lipez, Circuit Judges.

Carolyn E. O'Connor on brief pro se.

Mary P. Harrington, Kathleen M. O'Hagan and Ronan, Segal & Harrington on brief for appellees.

October 22, 2001

Per Curiam. After a thorough review of the record and of the parties' submissions, we affirm. To the extent appellant claims that those who decided to fire her were improperly motivated by her religion, her claim fails. She does not allege that anyone with firing authority knew she was a fundamentalist Christian; indeed, she admits her statement regarding her beliefs was stripped of any religious connotation before being repeated to others in the workplace. Moreover, animosity of one who lacks decision-making authority cannot support a Title VII claim, even if that animosity is religiously-motivated. *Conto v. Concord Hosp., Inc.*, 2001 WL 1081606 at n. 4, No. 01-1017 (1st Cir. Sept. 20, 2001).

To the extent appellant attempts to make out a claim for religious discrimination based on a hostile work environment, she fails. *See Hernandez-Torres v. Intercontinental Trading, Inc.*, 158 F.3d 42, 48 (1st Cir. 1998) (acknowledging claim for religious discrimination based on hostile work environment). In order to state such a claim, O'Connor must allege the harassment based on her religious beliefs was "severe or pervasive," *O'Rourke v. City of Providence*, 235 F.3d 713, 728 (1st Cir. 2001). She wholly fails to make such an allegation; and her charge of a single incident of religious harassment does not rise to the necessary level. "By its nature, a hostile work environment often means that there are a series of events which mount over time to create such a poisonous atmosphere as to violate the law. In the leading Supreme Court cases, the evidence of harassment covered a period of years." *Id.* at 727 (citing

Faragher v. City of Boca Raton, 524 U.S. 775, 782 (1998); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 20-23 (1993); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 59-60 (1986)). To the extent she claims she was "ostracized" by other employees, her claim fails because (once again) any reference to her religion was omitted during discussions among employees. Thus, she has failed to allege that the other employees even knew she was a fundamentalist Christian; lacking such knowledge, any harassment or ostracism could not have been motivated by her co-workers' animosity toward her religion.

Because O'Connor did not include her additional allegations of age and sex discrimination in her administrative charge, the court cannot consider any instances of age or sex discrimination in determining whether the alleged harassment was severe or pervasive; and to the extent O'Connor attempts to make distinct claims based on age or sex discrimination, the attempt fails. *See* 29 U.S.C. § 626(d); 42 U.S.C. § 2000e-5(f); *Lattimore v. Polaroid Corp.*, 99 F.3d 456, 464 (1st Cir. 1996).

The appellee's motion for sanctions pursuant to Fed. R. App. P. 38 is denied.

Affirmed. 1st Cir. Loc. R. 27(c).

United States Court of Appeals

For the First Circuit

No. 01-1547

CAROLYN E. O'CONNOR

Plaintiff, Appellant,

v.

NORTHSHORE INTERNATIONAL INSURANCE SERVICES, INC.,

Defendant, Appellee.

Before

Boudin, Chief Judge,
Torruella and Lipez, Circuit Judges.

ORDER OF COURT

Entered: December 5, 2001

Appellant's "Request for Appeal of Decision," which we treat as a petition for panel rehearing, is denied. The court's decision and reasoning in its judgment dated October 22, 2001 remains sound, and appellant offers no substantive arguments to the contrary.

By the Court:

Richard Cushing Donovan, Clerk

By: JULIE GREGG
Appeals Attorney

[cc: Ms's O'Connor and Harringotn [sic]]